IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1578 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHARDA EDUCATION TRUST - Petitioner(s)
Versus
SOMNATHAN NAIR OR HIS SUCCESSOR IN OFFICE - Respondent(s)

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Appearance :
MR SHIRISH JOSHI for Petitioner(s) : 1,
MR DIPAK A. THAKER for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 16/01/2006

ORAL JUDGMENT

1. The petitioner i.e. Sharda Education Trust,

has filed this petition under Article 226 of the Constitution of India praying for direction to Regional Provident Fund Commissioner, respondent herein to entertain the review application filed by the petitioner- Trust on 9th December, 1996, against his order dated 21.11.1996 passed under Section 7 (A) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. The petitioner also sought for the direction to withdraw the order dated 15.01.1997 directing the petitioner to make the payment of Rs.6,29,784 failing which the petitioner would be deemed to be a person in default.

2. It is the case of the petitioner that the petitioner is a registered Public Charitable Trust or deemed to have been registered under Bombay Public Trust Act. A trust runs three schools at Anand i.e. (i) Sharda High School (ii) Sharda Primary School and (iii) Sharda

Balmandir. It is also the case of the petitioner that for no reason and against the evidence on record, the respondent has clubbed one Sharda English Teaching School as an institution being run by the petitioner- Trust for covering the Trust under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and that has given reason to the petitioner to file the present petition. It is also the case of the petitioner that respondent has not entertained and has not passed any order on the review application filed by the Trust against the order dated November, 21, 1996. Despite the fact that there is a specific provision for moving such an application under the Act, the said application has still not been decided by the respondent. The question which has been raised before the Court is as to whether respondent is right in considering the staff employed by Sharda English Teaching School to be that of the staff of the Trust or

in the alternative whether he is right in considering the said school as one of the institutions being run by the petitioner-Trust. It is further stated that petitioner has written letters after letters to show that Sharda English Teaching School is not a school being run by the trust, that the said school is being run by some private owners, and that the petitioner Trust does not have any control over the staff employed by the said school.

3. Despite the aforesaid facts, impugned order dated 21.11.1996 was passed by the respondent. The petitioner preferred review application which has not been decided and the demand raised as a result of the order passed under Section 7(A) of the Act, was sought to be executed and hence, the petitioner has approached this Court seeking stay against the execution of the said order till the petitioner's review application is decided by

the respondent.

4. Petition was admitted and the rule was issued on 10th March, 1997. The court has passed order with regard to Status quo till 17.03.1997 since the learned counsel appearing for respondent on that day had asked for time to file affidavit in reply, the said order of status quo was continued from time to time and on 06.10.1997 the court passed the detailed order. The court has observed in its order that the Provident Fund Commissioner has issued an order calling upon the petitioner, after hearing them, to pay up an amount of Rs.6,29,684/- towards dues of teachers pertaining to the Provident Fund Scheme. In a matter like this, there cannot be an unconditional stay. The court further observed that petitioner must deposit the amount with the respondent, if it wanted the stay of the order of Provident Fund Commissioner. The court

further observed that this being the matter concerning welfare legislation, the deposit is all the more necessary. The court thereafter vacated the interim relief and directed that the respondent would be at liberty to execute the order, though the petition was admitted.

5. It appears that till 06.05.2005 the petition was not fixed for hearing. Even thereafter, petition was listed from time to time. Mr.Shirish Joshi, the learned counsel appearing for petitioner has submitted that looking to the prayer made in the petition, if the respondent is directed to decide the petitioner's review application within specific period, then it would met with end of justice.

6. After having gone through the order passed by the Provident Fund Commissioner and after having gone through the review application made by the petitioner, which is still pending

before the respondent, the Court is not inclined to go into the merits of the matter as the entire issue is still pending before the Commissioner and since the interim relief granted earlier, is already vacated by the Court on 06.10.1997, it is also not known as to whether impugned order has been executed by the respondent thereafter. Be that as it may, without going into the merits of the matter, this court hereby directs the respondent to decide review application of the petitioner as early as possible preferably within three months from the date of the receipt of the writ or from the date of the receipt of the certified copy of the order. It is however, made clear that this direction will not amount to entertaining the petition. It is also made clear that interim relief is already vacated on 06.10.1997 and it is open for the respondent corporation to execute the impugned order which is challenged in this petition. The respondent

authority is, therefore directed to decide review application of the petitioner if not decided so far, without being influenced by the fact that the present petition was admitted and now disposed off and the interim relief which was initially granted, was subsequently vacated and without being influenced by his own order.

7. Subject to the aforesaid direction, this petition is disposed of at this stage. Rule is discharged. Direct Service permitted.

(K.A.PUJ, J.)

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